

## **REMARKS**

### **A. Objection to the Abstract**

In the office action mailed September 17, 2003, the Examiner objected to the Abstract as using the term “means”. Applicant has amended the Abstract to delete all reference to the term “means”. Thus, Applicant submits that the Examiner’s objection is overcome.

### **B. Status of Claims**

With this amendment, Applicant has canceled claims 2, 9, and 15 and has amended claims 1, 7, 8, and 13. Thus, claims 1, 3-8, 10-14, and 16-20 are pending in the application. The amendments to claims 1, 7, 8, and 13 do not introduce new matter into the application.

### **C. Rejection Under 35 U.S.C. Section 103(a)**

In the office action mailed September 17, 2003, the Examiner rejected claims 1-20 under 35 U.S.C. Section 103(a), as being unpatentable over U.S. Patent No. 2,990,631 to Brown (hereinafter referred to as “Brown”), in view of U.S. Patent No. 5,562,166 to Griffin (hereinafter referred to as “Griffin”). The Examiner states the following reasons for the rejection:

Brown discloses a trenching machine (figures 1-10) having a wheeled frame (generally 2), a first motor means 18 mounted on the frame (as seen in figure 1) and a digging chain 106 driven by the first motor means and supported by a chain guide 100 for pivotal movement (via 14) about a horizontal axis (as seen in figures 1 and 2). Further, Brown shows the machine having a locking means (140) to limit the pivotal movement as well as the use of a plurality of parallel and coaxial shafts and pulleys (as seen in figures 4-6) for driving respective features of the machine but fails to show the use of a second motor means. However, Griffin teaches that it is well known in the art to provide an earthworking device with separate and distinct motor means (as seen in figure 1, reference numerals 20 and 52). Further, Griffin teaches that it is well known to provide a first motor means 20 for driving the earthworking tool 18 and a separate and distinct second motor means 52 to drive at least one of the ground wheels 54. It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the machine of Brown with the teachings of Griffin in order to provide a trencher which would have independent power sources and thus

not susceptible to cross power drains.

With this Amendment, Applicant has canceled claims 2, 9 and 15. Thus, the Examiner's rejection with respect to claims 2, 9 and 15 is moot. With respect to pending claims 1, 3-8, 10-14, and 16-20, Applicant traverses the Examiner's rejection. A *prima facie* case of obviousness has not been established because the combination of Brown and Griffin, as suggested by the Examiner, does not teach or suggest Applicant's invention recited in the rejected claims, as amended. To establish a *prima facie* case of obviousness, the prior art reference, or references, when combined, must teach or suggest all the claim limitations. See M.P.E.P. §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and no based on applicant's disclosure. In re Vacek, 947 F. 2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991).

Neither Brown nor Griffin, either alone or in combination, teach or suggest Applicant's claimed invention. Applicant has amended independent claims 1, 7 and 13 to include the feature "an engine mounted on the frame comprising a first motor means and a second motor means" (see ¶0078 of specification). As admitted by the Examiner in the final office action (page 3), "[Brown] fails to show the use of a second motor means". However, the two motors (20, 52) disclosed by Griffin are not housed in an engine mounted on the frame. Rather, as the Examiner admits, Griffin teaches "separate and distinct" first and second motor means (page 3), with one motor (20) positioned in the front of the device and another motor (52) positioned in the back of the device, and the motor fuel tank (30) positioned separate from the motors (20, 52). In contrast, the first and second motor means in the engine of the present invention, which could be the same motor means, are not separate and distinct but are housed in a single engine mounted on the central portion of the frame (see Fig. 1). Thus, it would not be obvious to combine the teachings of Brown and Griffin

to arrive at Applicant's claimed invention, as amended.

In addition, Applicant has amended claim 1 to include the limitations of claim 2, thus further defining the drive wheels such that the second motor means "drives at least two substantially coaxial frame wheels that are independently rotatable when disengaged from the second motor means, and rotated in unison when engaged with the second motor means". Neither Brown nor Griffin, alone or in combination, discloses this feature.

Applicant has amended claim 7 to include the limitations of claim 9 and a limitation from claim 8, thus further defining the chain guide such that "the chain guide is longitudinally slidably mounted on a boom and such that at least one aperture is provided in each of the chain guide and boom in relative positions so the apertures are aligned for receiving a securing pin when the chain guide is moved longitudinally along the boom to a point where the digging chain is relatively loosely fitted about the drive sprocket and the chain guide to enable fitting and removal of the digging chain". Neither Brown nor Griffin, alone or in combination, discloses this feature.

Applicant has amended claim 13 to include the limitations of claim 15, thus further defining the actuating arm such that "the actuating arm comprises a longitudinally movable screw threaded shaft, which meshes with a rotatably mounted helical or bevel gear". Neither Brown nor Griffin, alone or in combination, discloses this feature.

Thus, even if one combines the subject matter taught by Brown and Griffin, one would not arrive at Applicant's unique and nonobvious invention set forth in the claims, as amended. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. 103(a), as being obvious over Brown, in view of Griffin.

**CONCLUSION**

In view of this amendment, Applicant respectfully requests that the Examiner issue a notice of allowance for the subject application. The Commissioner is hereby authorized to charge payment of any fees associated with this communication to Deposit Account No. 500977. Should the Examiner have any questions regarding this Amendment, Applicant invites the Examiner to contact the undersigned attorney.

Respectfully submitted,

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